

GRIBBLES PATHOLOGY (M) SDN BHD

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v.

ADVENTIST HOSPITAL & CLINIC SERVICES (M) BHD

HIGH COURT MALAYA, PENANG

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RK NATHAN J

[CIVIL SUIT NO: 22-751-1999]

21 DECEMBER 2001

CIVIL PROCEDURE: *Contempt of court - Order of committal, application for - Notice of motion - Error found in notice of motion - Whether strict compliance of the rules and pleadings are necessary - Whether inadvertence can be excused when affecting one's liberty*

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CIVIL PROCEDURE: *Affidavits - Jurat - Affidavit affirmed in Bahasa Malaysia - Deponent of Australian nationality - Failure to state whether affidavit was explained to deponent in English language - Whether deponent understood contents of affidavit*

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The plaintiff had obtained leave to commit four directors of the defendant company for their contempt in refusing and for failing to obey the order of injunction issued by this court on 13 October 1999 obtained by consent of both parties. Having obtained the leave, the plaintiff then proceeded to file this notice of motion to commit the said four directors. However, in the notice of motion the plaintiff pleaded that the contempt of the said four directors was in their refusal or failure to comply with an order of court granted on 12 September 2001 which order was actually the *ex parte* order granting leave to file this notice of motion.

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The defendant raised two preliminary objections: (i) that there was no order granted on 12 September 2001 as alleged by the plaintiff in its notice of motion; and (ii) the jurat did not state that the affidavit which was affirmed in Bahasa Malaysia was explained to the deponent in the English language by the Commissioner of Oaths.

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Held:

[1] Since contempt proceedings is quasi-criminal in nature and which affects the liberty of an individual since it calls for a director's incarceration for a breach of the order, strict compliance of the rules and pleadings are necessary. Here the plaintiff is relying on an order to commit the directors to prison that has no bearing to the prayers sought for committal. Carelessness or inadvertence cannot be excused when it comes to affecting one's liberty. Any error must be to the benefit of the defendants. (p 147 a-b)

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- a* [2] The translator had not stated that she had truly explained the contents of the affidavit affirmed in Bahasa Malaysia to the deponent, an Australian by nationality in the English language. The court is not satisfied if the deponent knew and understood the contents of the affidavit. (p 148 a)

- b* [Notice of motion dismissed with costs.]

For the plaintiff - JA Yeoh; M/s Shearn Delamore & Co

For the defendant - Karpal Singh (LL Yong); Yong & Co

Reported by Suhainah Wahiduddin

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JUDGMENT

RK Nathan J:

Facts

- d* On 4 June 2001 the plaintiff obtained leave to commit four directors of the defendant for their contempt in refusing and for failing to obey the order of injunction issued by this court on 13 October 1999 obtained by consent of both parties. For the purposes of these proceedings there is no need to set out the details of the order dated 13 October 1999.

- e* Having obtained the leave, the plaintiff then proceeded to file this notice of motion to commit the said four directors. However, in the notice of motion the plaintiff pleaded that the contempt of the said four directors was in their refusal or failure to comply with an order of court granted on 12 September 2001 which order was actually the order granting leave.

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Preliminary Objection By The Directors

Mr. Karpal Singh for the four directors informed the court at the outset of the hearing of the committal proceedings that he had two preliminary objections and that he had indeed raised them in his affidavits in reply.

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Findings Of The Court

The first preliminary objection was that there was no order granted on 12 September 2001 as alleged by the plaintiff in its notice of motion. The defendants averred in their joint affidavit that they were unaware of any such order nor was such an order served on them. Having perused the court file I note that the order dated 12 September 2001 is the *ex parte* order granting leave to file this notice of motion. Mr. J.A. Yeoh for the plaintiff readily conceded that there was an error and that the order that ought to have been stated ought to have been the order dated 13 October 1999 which was the consent order whose terms the defendant was alleged to

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have breached through its directors. Since contempt proceedings is quasi-criminal in nature and which affects the liberty of an individual since it calls for a director's incarceration for a breach of the order, strict compliance of the rules and pleadings are necessary. Here the plaintiff is relying on an order to commit the directors to prison that has no bearing to the prayers sought for committal. Carelessness or inadvertance cannot be excused when it comes to affecting one's liberty. Any error must be to the benefit of the defendants.

The next preliminary objection related to the jurat of the affidavit affirmed by one David John Thomson, the Chief Executive Officer of the plaintiff, an Australian by nationality and whose affidavit was filed in support of the leave application. The jurat of the affidavit reads as follows:

Diikrar oleh DAVID JOHN THOMSON)
 pada 27 MAR 2001)
 di KUALA LUMPUR)
 pada 3.30 petang)
 melalui terjemahan oleh)
 ANIS IDURA BT. HASHIM)
 yang tersebut mula-mula sekali)
 bersumpah bahawa dia telah)
 dengan sebenarnya, dengan)
 nyatanya dan dengan dapat)
 didengar menterjemahkan isi)
 kandungan afidavitnya dengan)
 deponent DAVID JOHN THOMSON dan)
 bahawa dia akan sebenarnya dan)
 jujurnya menterjemahkan sumpah)
 yang sedang hendak dikendalikan)
 ke atas dirinya DAVID JOHN)
 THOMAS yang tersebut itu.)
 Anis)

Dihadapan saya
 t.t.
 Massa Singh Gill
 Pesuruhjaya Sumpah

Mr. Karpal Singh pointed out that the jurat did not state that the said affidavit affirmed in Bahasa Malaysia was explained to the deponent in the English Language by the Commissioner of Oaths.

a It seems clear that Anis Idura bt. Hashim had not stated that she had truly explained the contents of the affidavit, affirmed in Bahasa Malaysia to the deponent in the English Language. I am therefore not satisfied if the deponent knew and understood the contents of the affidavit.

b In the circumstances I found that both the preliminary objections were well taken and I therefore dismissed the notice of motion with costs.

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